

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Anthony O. Corso Living Trust, by and
through Charles C. Corso, et al., Individually
and on Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

KCG Americas LLC, et al.,

Defendants.

Civil Action No.: 1:14-cv-01087

Judge James S. Gwin

**JOINT MOTION FOR CLARIFICATION
AS TO THE COURT'S AUGUST 27, 2014 ORDERS**

Now come the Plaintiffs and Defendants (collectively, the “Parties”) to respectfully request clarification as to the Court’s August 27, 2014: (1) Order [Doc. 26] addressing both (a) Plaintiffs’ motion for appointment of lead plaintiff and approval of lead counsel (the “Motion for Lead Plaintiff”), and (b) the Parties’ Joint Motion for a scheduling order related to the Defendants’ anticipated motions to dismiss the Plaintiffs’ anticipated Second Amended Complaint (the “SAC”); and (2) Case Management Conference Scheduling Order [Doc. 28].

Specifically, the Parties seek to clarify the following three items addressed in the Orders: (i) whether the Court requires a hearing on September 26, 2014 on Plaintiffs’ pending Motion for Lead Plaintiff, which is uncontested; (ii) that the Defendants’ answers to the SAC are due on the same date as their anticipated motions to dismiss the SAC, i.e., five weeks from the filing of the SAC; and (iii) that the Parties’ joint proposal for coordinating discovery as set forth below is acceptable, and that all discovery and other proceedings are currently stayed in light of

the Private Securities Litigation Act of 1995 (the “PSLRA”) pending the Court’s Order on the Defendants’ anticipated motions to dismiss the SAC.

Background

On July 21, 2014, Plaintiff Corso filed the Motion for Lead Plaintiff, which motion remains pending [Doc. 7]. On August 22, 2014, the Parties filed a Joint Motion for a Schedule for the Filing of Plaintiffs’ Second Amended Complaint and the Briefing Schedule for the Defendants’ Anticipated Motions to Dismiss [Doc. 22]. On August 27, 2014, the Court issued two Orders addressing those motions [Docs. 26 and 28].

First, the Court stated that it would “shortly enter a case management conference scheduling order and a notice of hearing with regard to the appointment of lead plaintiff and approval of lead counsel” [Doc. 26]. The Court thereafter issued a Notice scheduling Plaintiffs’ pending Motion for Lead Plaintiff for a hearing on September 26, 2014 at 8:30 a.m.

Second, the Court ordered that the Defendants’ anticipated motions to dismiss are to be filed within five weeks of the filing of the SAC. *Id.* The Order further required Defendants to file answers to the SAC, and provided that it would not consider a motion to dismiss to be a responsive pleading to the SAC. *Id.* The Order did not provide a date by which the Defendants are required to answer the SAC.

Third, the Court issued a Case Management Conference Scheduling Order [Doc. 28]. That Order schedules a Case Management Conference for September 26, 2014 at 8:30 a.m., and requires the parties to “start discovery before their Fed. R. Civ. P. 26(f) discovery conference”. *Id.* at 3. It further requires the parties to submit a joint report of their Rule 26(f) conference in the form annexed as Attachment 1 to the Court’s Case Management Conference Scheduling Order. *Id.* at 4.

Relief Requested

The Parties respectfully request clarification of three items included in the Court's referenced Orders that were issued on August 27, 2014. First, with respect to Plaintiffs' pending Motion for Lead Plaintiff, the Plaintiffs respectfully inform the Court that the motion is uncontested, as no other motions for lead plaintiff were filed. Accordingly, the Parties wish to clarify whether the Court still requires a hearing on September 26, 2014 on the Plaintiffs' pending Motion for Lead Plaintiff.

Second, the Parties request clarification of the date by which the Defendants are required to file an answer to the SAC. Specifically, the Parties seek to confirm that answers are due on the same date as the Defendants' anticipated motions to dismiss the SAC, i.e., five weeks from the filing of the SAC. The Parties have conferred and Plaintiffs do not object to the Defendants filing their answers on that date.

Third, the Parties request clarification of the Court's Case Management Conference Scheduling Order requiring the Parties to start discovery before their Rule 26(f) conference, and to submit a joint report of that conference to the Court. As set forth in the Parties' Joint Motion [Doc. 22 at 2, n.2], the Plaintiffs' claims are subject to the PSLRA, including the PSLRA's automatic stay of all discovery and other proceedings during the pendency of any motion to dismiss, "unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party". 15 U.S.C. §77z-1(b)(1). The PSLRA's automatic stay applies when a defendant informs the court that it intends to file a motion to dismiss an anticipated amended complaint. *See In re Firstenergy Corp. Secs. Litig.*, 229 F.R.D. 541, 543-544 (N.D. Ohio 2004) (Gwin, J.) (holding that because the defendant informed the court of its intent to move to dismiss after lead plaintiff filed its consolidated complaint, "the Court finds that the PSLRA's discovery stay provision

applies”). Accordingly, because the Defendants have advised the Court that they intend to move to dismiss the SAC, the PSLRA’s automatic stay of discovery is currently in effect, and commencing discovery before the Rule 26(f) conference would violate the stay.

Nonetheless, in the interest of expediency and judicial economy, the Parties plan on participating in a Rule 26(f) conference and coordinating to the greatest extent possible on discovery going forward, including discussing and agreeing to discovery dates at the Rule 26(f) conference. To that end, the Parties anticipate submitting their Rule 26(f) report with anticipated discovery dates that are triggered by the entry of an Order by the Court on the Defendants’ anticipated motions to dismiss the SAC. Accordingly, the Parties seek to clarify with the Court that their joint proposal for coordinating discovery is acceptable, and that all discovery and other proceedings are currently stayed pending the entry of an Order by the Court on the Defendants’ anticipated motions to dismiss the SAC, except that Plaintiffs may seek to serve document subpoenas on certain non-parties for preservation purposes.

Conclusion

WHEREFORE, the Parties respectfully request that the Court grant the motion and grant such other relief as the Court may deem just and proper.

Dated: September 10, 2014

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CERTIFICATE OF SERVICE

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